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David L. Cohen
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Attorneys for Plaintiff,
United States Golf Association, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES GOLF ASSOCIATION,
INC.**

Plaintiff,

v.

VARIOUS JOHN and JANE DOES

Individuals,

and

VARIOUS XYZ ENTITIES,

Defendants.

CASE NO. 08-CV-0981 (JM)

**SECOND AFFIDAVIT OF
BARRY L. COHEN, ESQ.**

I, Barry L. Cohen, Esq., being duly sworn, hereby depose and say:

1 1. I am over eighteen (18) years of age and fully competent to make the
2 statements herein.

3 2. I am an attorney licensed to practice law in the Commonwealth of
4 Pennsylvania and the State of New Jersey, and have submitted an application to be
5 admitted *pro hac vice* regarding the above-captioned matter, which Judge Miller has
6 approved.

7 3. I am a partner with the law firm of Thorp, Reed & Armstrong, LLP, and
8 counsel of record for Plaintiff United States Golf Association, Inc. ("USGA" or
9 "Plaintiff"). A substantial portion of my practice centers on law of intellectual property
10 rights.

11 4. I submit this second Affidavit pursuant to Fed. R. Civ. P. 65(b)(1)(B) in
12 support of the USGA's Plaintiff's *Ex Parte* Motion For Temporary Restraining Order,
13 Order for Seizure of Infringing Goods and for Preliminary Injunction. I have personal
14 knowledge of the facts stated herein and could and would testify competently thereto if
15 called upon to do.

16 5. USGA in regards to prior U.S. OPENS has sought similar relief from
17 numerous Federal District Courts to secure the same type of relief that it is currently
18 seeking from this Court with regard to the 2008 U.S. OPEN at Torrey Pines. Examples of
19 these prior Temporary Restraining Orders, Orders for Seizure of Infringing Goods, and
20 Orders to Show Cause for Preliminary Injunction are attached as Exhibit A to USGA's *Ex*
21 *Parte* Motion.

22 6. USGA has not sought this type of relief for every past U.S. OPEN for
23 several reasons including, the location of the U.S. OPEN and its effect on whether or not
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1 counterfeiters were expected; the ability to use local ordinances that were available and
2 suitable to USGA's purpose; and for financial reasons. However, whenever the USGA has
3 sought such relief from other Federal District Courts, similar to the relief that USGA is
4 currently seeking, USGA has always obtained such relief. USGA is not aware of any
5 Federal District Judge denying it the requested relief sought with regard to USGA's efforts
6 to seize counterfeit merchandise.

7
8 7. Given the location of the U.S. OPEN at Torrey Pines there is no general
9 spectator parking within the Torrey Pines vicinity. All parking for the U.S. OPEN is to
10 take place at Qualcomm Stadium in the Mission Valley area of San Diego and at a few
11 other select locations. There will be free shuttle service from these locations. Certainly,
12 given the location of the Qualcomm parking facility, many spectators will take the MTS
13 Trolley, walk, and/or get to the shuttle service at Qualcomm through other means.

14 8. While the defendant counterfeiters may be in a wide variety of areas in
15 downtown San Diego and areas closer to Torrey Pines where the shuttle buses, taxis and
16 limos disembark passengers, it is expected that a larger concentration of counterfeiters will
17 be in and around the authorized parking lot areas. Prior to and during the U.S. OPEN,
18 USGA will have signage posted at the authorized parking facilities advising the public that
19 the sale of counterfeit and/or unlicensed merchandise is prohibited.

20 9. It is my custom and habit and if our requested relief is granted, I or
21 persons under my supervision shall in this instance personally speak to USGA's hired
22 private security team with regards to the procedures involved in the physical process of
23 seizing counterfeit merchandise. Such procedure includes the following:
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- 1 • Upon observation of the counterfeit merchandise being sold, the
- 2 authorized process servers shall approach the defendant
- 3 counterfeiter and identify themselves;
- 4
- 5 • The authorized process servers shall then hand to the defendant
- 6 counterfeiter a copy of the Complaint, Summons and the
- 7 Temporary Restraining Order, Order for Seizure of Infringing
- 8 Goods, and Order for Preliminary Injunction;
- 9
- 10 • The authorized process server shall request the name, address
- 11 and/or other identification of the defendant counterfeiter and place
- 12 such information onto the receipt and copy of the same for USGA;
- 13
- 14 • The authorized process server shall then take possession of the
- 15 counterfeit merchandise and provide a written receipt of seized
- 16 items to the defendant counterfeiter;
- 17
- 18 • The seized goods shall then be sealed and affixed with a label
- 19 identifying the name or other identification of the defendant
- 20 counterfeiter from whom such goods were seized;
- 21
- 22 • The authorized process server shall inform the defendant
- 23 counterfeiter that they may obtain additional information from
- 24 USGA's counsel whose contact information is listed in the served
- 25 Court Order;
- 26
- 27 • The authorized process serve shall inform the defendant
- 28 counterfeiter that a return hearing has been set for the date as
- identified in the serve Court Order and that at such date and time

1 the defendant counterfeiter will have an opportunity to address the
 2 Court to explain why he/she believes that such goods were
 3 improperly seized and may make a claim for damages against
 4 USGA; and

- 5 • The authorized process server shall then give to the USGA or its
 6 counsel the seized goods and a copy of the receipt of service of the
 7 Summons and seizure of the goods. USGA shall then maintain the
 8 seized goods and have them available, if needed, for the return
 9 hearing as set forth in the Court Order.

10 10. If this Court grants the request relief, USGA shall not use any on-duty
 11 police officers or other on-duty law enforcement personnel to carry out the Court Ordered
 12 seizure. USGA shall only use its private security team, or off-duty law enforcement
 13 officers who are being paid by USGA as opposed to being paid with public funds, to carry
 14 out the Court Ordered seizure. In no event shall any off-duty law enforcement personnel
 15 carry out property seizures as contemplated by this Order in an official law enforcement
 16 capacity.

17 I verify under penalty of perjury that the foregoing statements are true and correct
 18 and signed as of the date reflected below in Philadelphia, County of Philadelphia,
 19 Pennsylvania.
 20

21 
 22 Barry L. Cohen, Esq.

23 Sworn to and subscribed before
 24 me this 6th day of June, 2008.

